

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 22 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARSHADKUMAR CHHOTALAL DUDHIA

Versus

CHANDRAKANTBHAI LAXMANBHAI DUDHIA

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Appearance:

1. Appeal from Order No. 22 of 1998  
MR MB GANDHI for Petitioners  
MR PV NANAVATI for Respondent No. 1  
GOVERNMENT PLEADER for Respondent No. 3  
MR RN SHAH for Respondent No. 7
2. Appeal from OrderNo 552 of 1995  
MR MB GANDHI for Petitioners  
MR PV NANAVATI for Respondent No. 1  
GOVERNMENT PLEADER for Respondent No. 3  
MR RN SHAH for Respondent No. 7

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/02/98

## ORAL JUDGEMENT

This appeal is against order dated 25.11.97 made on application for temporary injunction by the Trial Court in Civil Suit No. 5923/96. These proceedings are connected with Civil Suit no. 2620/92 out of which arose appeal from order No.552/95 which has been disposed of today by a separate order. The basic facts on which the present suit is instituted are same while the other suit concerns declaration of title and injunction in respect of land in dispute, the present suit concerns the proceedings under Urban Land Ceiling Act in respect of very same property pending on application under Section 21 of the Urban Land Ceiling Act moved by defendants, Nos.1 and 2 who are also defendants in present suit. In the proceedings under the Urban Land Ceiling Act, in respect of the surplus land found in possession of the defendants 1 & 2, heirs of Laxmanbhai, application was moved under Section 21 of the Urban Land Ceiling Act seeking exemption from certain provisions of the Act inter alia on the ground that property will be used for construction for weaker section of the society through a Public Trust Respondent No.7. The relief claimed in the suit is for permanent injunction restraining the respondents from proceeding with application under Section 21 of the Act.

2. As has been found in A.O.No.552/95, the plaintiffs have failed to prove prima facie case in their favour, holds good for this case also. The plaintiff cannot claim any interim relief. Moreover in this case interim relief is in respect of staying the proceedings under Section 21 of the Urban land Ceiling Act which being independent proceedings and statutory authority is under obligation to act under the provisions of the statute. Ordinarily there should be no impediment in the proceedings. No exceptional circumstances has been pointed out in this case.

3. As a matter of fact, the Trial Court instead of deciding application Exh.5 had thought it fit to postpone its decision until final hearing of the suit no. 2620/92 in which the interim order passed by this court in A.O.No.552/95 was then operating. Thus ostensibly though there is no order deciding the right of the parties appears to have been made against which appeal could be filed but postponing the application for interim injunction during the pendency of another suit indefinitely, implicitly amounts to its rejection. Treating it to be order rejecting the application at this stage, even if the appeal is entertained, in view of the

facts stated above and detailed in A.O.No.2620/92 no case for issue of temporary injunction prayed for is made out.

3. The appeal is dismissed with no order as to costs.

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